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U.S. Department of Justice
Civil Division
Office of International Judicial Assistance

*U.S. Central Authority
Benjamin Franklin Station
P.O. Box 14360
Washington, D.C. 20004
+1 (202) 514-6700
OIJA@usdoj.gov*

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Service of Process on the United States Government

The United States Department of Justice's Office of International Judicial Assistance ("OIJA") serves as the Central Authority pursuant to the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("Hague Service Convention"). OIJA also serves as the Central Authority pursuant to the Additional Protocol to the Inter-American Convention on Letters Rogatory, to which the United States is a signatory for purposes of legal service of documents. In addition, OIJA handles service requests received from non-Convention States through diplomatic channels. Unlike service of process requests directed at private individuals or companies located in the United States, which are executed through OIJA's private contractor, requests for service of process on the United States Government, which includes its departments, agencies, or instrumentalities, should be sent directly to OIJA. There is no fee for service requests designated for the United States Government. Requests for service of process on the United States Government should be mailed to OIJA at U.S. Central Authority, U.S. Department of Justice, P.O. Box 14360, Washington, DC 20004.

Given that most service requests for the U.S. Government are received pursuant to the Hague Service Convention, this document will focus on that process although the same guidelines apply if a request is received pursuant to the Inter-American Convention or letters rogatory through diplomatic channels.

As noted, OIJA is the U.S. Central Authority for the Hague Service Convention. *See* Art. 2 of the Hague Service Convention. As explained in the Practical Handbook on the Operation of the Hague Service Convention ("Handbook"), the Central Authority is "a receiving authority, in charge of receiving requests for service from requesting States and executing them or causing them to be executed."¹ The Handbook also notes that the Central Authority "may not be treated as an agent of the defendant on whom the document may be served."² The U.S. Central Authority receives and executes requests for service on the U.S. Government, but the Central Authority is not the legal representative or agent of the U.S. Government. Therefore, pursuant to Article 5 of the Hague Service Convention, delivery of requests for service from a foreign court

¹ HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, PRACTICAL HANDBOOK ON THE OPERATION OF THE SERVICE CONVENTION 40, ¶ 112 (2016), *available at* <https://www.hcch.net/en/publications-and-studies/details4/?pid=2728&dtid=3>.

² *Id.* at 41, ¶ 112

to the U.S. Central Authority is not effective service.³ Service is only complete upon receipt of the documents by the appropriate U.S. Government office or agency. Please allow sufficient time for the U.S. Central Authority to serve the appropriate U.S. Government office or agency.

In addition, service on the U.S. Government is only proper when transmitted through diplomatic channels or through Article 5 of the Hague Service Convention by delivery to the U.S. Central Authority. While the United States does not object to Article 10 service by postal channels for private individuals or companies, service on the U.S. Government cannot be effected through Article 10.

Below is an outline of what is required for a proper request for service of process on the U.S. Government pursuant to the Hague Service Convention. A request must be provided in duplicate, with all documents translated into English.⁴ See Art. 5 of the Hague Service Convention. A completed Mandatory Form must accompany the request, and also be furnished in duplicate and in English.⁵ See Arts. 3 and 5. Please utilize the most recent version of the Model Form and type in the information. The Model Form must include the full mailing address of the Requesting Authority (i.e. the foreign court). The only proper defendant is the United States of America as departments, agencies, or instrumentalities of the U.S. Government have no legal personality in a foreign state separate from that of the U.S. Government and cannot be sued independently. The documents to be served must include sufficient information about the case, usually in the form of a complaint, statement of claim, or similar document.

In addition, based on customary international law, the U.S. Government must be afforded 60 days from the date of receipt of service of the documents until the first response, scheduled appearance, and/or hearing date in the foreign state. Given that service is not effective upon delivery of the documents to the U.S. Central Authority, ample time needs to be given for the U.S. Central Authority to serve the appropriate U.S. Government office or agency, which must then be afforded 60 days from the date of receipt of service of the documents until the first response, scheduled appearance, and/or hearing date. For example, if a country's domestic law requires a written response within two weeks of effective service, that requirement must be affirmatively waived in the court documents, affording the U.S. Government the full 60 days from the date of service before a response is due. If a country's domestic law requires a written response to be submitted to the court 10 days before the scheduled hearing date, the hearing date must account for this requirement while still affording the U.S. Government 60 days from the date of service before the written response is due.

Upon evaluating a request for these requirements, the U.S. Central Authority will issue a certificate of acceptance or rejection which will be mailed to the Requesting Authority. Service is only effective and the appropriate notice given if the U.S. Central Authority issues a certificate

³ Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters art. 5, Nov. 15, 1965, 658 U.N.T.S. 163 ("The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency....").

⁴ UNITED STATES OF AMERICA - CENTRAL AUTHORITY & PRACTICAL INFORMATION, <https://www.hcch.net/en/states/authorities/details3/?aid=279> (last visited Oct. 6, 2016).

⁵ MODEL FORM ANNEXED TO THE CONVENTION (REQUEST, CERTIFICATE, SUMMARY WITH WARNING), <https://www.hcch.net/en/instruments/specialised-sections/service/model-form> (last visited Oct. 6, 2016).

of acceptance. Service is effective on the date indicated on the acceptance certificate. In cases where the U.S. Central Authority issues a certificate of rejection, service is deemed defective, the U.S. Government is not a party to the litigation, will not file a response or appear at the hearing, and will not recognize the validity of any judgment that might be rendered against the United States of America.